Supreme Court, U.S.
FILED
APR 4 2001
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(3)

No. 00-1056

In the Supreme Court of the United States

SOUTHWEST MARINE, INC.,
Petitioner,

v.

RICHARD DANZIG, Secretary of the Navy,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

The government's brief in opposition serves to frame two important issues of law presented by this case:

1. Statutory Interpretation and Legislative History:

   Can legislative history be used to contradict the unambiguous English of a statute (or, in this case, of two statutes)?

2. Government Contracts vs. Bankruptcy Law:

   Do the provisions of a government contract operate to deprive the contractor of the fresh start promised by bankruptcy law?

1. Statutory Interpretation and Legislative History.

The government's brief acknowledges that the Contract Disputes Act of 1978 (CDA) as amended by the Federal Courts Improvement Act of 1982 (P.L. 97-164) (FCIA) provides for government appeal of an agency board decision by transmission of such a decision:

> "... to the Court of Appeals for the Federal Circuit for judicial review under section 1295 of Title 28 ..." 41 U.S.C. § 607(g)(1)(B).

"Section 1295 of Tile 28," a portion of FCIA, provides:

> "(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction-
>
> ....
>
> (10) of an appeal from a final decision of an agency board of contract appeals pursuant to section 8(g)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)(1);"

The thesis of the government's brief in opposition, in support of the decisions below, is that the plain English of both of those statutes does not mean what it says when the underlying contract is maritime: the Federal Circuit has no jurisdiction, the government's appeal is not to be transmitted to that Court, and "judicial review under 28 U.S.C. § 1295" is not available.[1/] That result is required, according to the government, because CDA § 4, 41 U.S.C. § 603, provides that appeals arising out of maritime contracts "shall be governed by" the Suits in Admiralty Act (SAA) and the Public Vessels Act "to the extent that those [statutes] are not inconsistent with [the CDA]." According to the government, the SAA's provision for libels in personam in district courts (46 U.S.C. App. 742) applies to deprive the Federal Circuit of jurisdiction. We are not told why the SAA's provision for

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[1/] Neither the government's brief nor the opinions below clarify the procedures for a government appeal of a board decision on a maritime contract. It is not known if transmission of the board decision to the district court "for judicial review" suffices, if approval of the Attorney General is required (see 41 U.S.C. § 607(g)(1)(B)), if the Federal Rules of Civil Procedure apply, if a complaint and summons are required, or how the district court should proceed (e.g. cross-motions for summary judgment or some species of appellate briefing).

actions in district courts is "not inconsistent with" the CDA's specific reference to the Federal Circuit and to 28 U.S.C. § 1295.

The government's brief in opposition and the opinions below would determine the meaning of the statutes, not by their words, but by adverting to "legislative history." An issue of law of far reaching importance is thereby subsumed in the issue of interpretation of the particular statutes at issue in its case: Are statutes to be given effect as they are written or as legislative history leads the courts to discern that they should have been written?[2/]

2. Government Contracts vs. Bankruptcy Law.

The government's brief asserts that the decision of the ASBCA, a tribunal specialized in government contract law, was error because "this case is a straightforward government contract law case to which bankruptcy law does not apply." The effect, however, of purporting to give government contract law supremacy over bankruptcy law is to deprive the debtor of the "fresh start" promised by bankruptcy law. The end result of the District Court's decision in this case is to create a new debt of the reorganized concern (to the Government) for each debt settled with another creditor. There is no relief from debts -- new obligations to the government spring up to replace each debt settled with a creditor. The issue is clear and important: Does any term of

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[2/] Cf. 2A Singer, Statutes and Statutory Construction (6th Ed. 2000) § 45:09, and see the opinion of the Federal Circuit in Southwest Marine of San Francisco v. United States, 896 F.2d 532 at 534 (1990) that the intent of Congress was "imperfectly embodied" in the CDA.

a government contract make the government the beneficiary of settlements with the creditors of a contractor reorganized under bankruptcy law and thereby deprive the contractor of a fresh start?

CONCLUSION

The issues presented by this case are of broad and continuing importance. The issue of statutory interpretation, in particular, implicates principles fundamental to the roles of courts and the legislature in our system of government.

Respectfully submitted
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